

65- INDEPENDENT AGENCIES - REGULATORY

407 - PUBLIC UTILITIES COMMISSION

CHAPTER 297 – ANTI-CRAMMING RULE: REGISTRATION REQUIREMENTS, COMPLAINT PROCEDURES AND PENALTY PROVISIONS FOR SERVICE PROVIDERS AND BILLING AGGREGATORS

SUMMARY - This rule prohibits telephone utilities from placing charges for services on a customer's bill without first receiving the customer's authorization. The rule also establishes a registration process for billing aggregators and service providers and establishes penalty procedures for violations.

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§1 GENERAL PROVISIONS AND DEFINITIONS

A. Scope of Rule.

This Chapter applies to telephone utilities, as defined in 35-A M.R.S.A. §102, that bill customers for services in Maine. This Chapter also applies to service providers and billing aggregators who bill for goods or services using a charge on customers' local telephone bills in Maine.

B. Definitions.

1. Billing agent. A "billing agent" is a telephone utility that includes in a bill it sends to a customer a charge for a product or service offered by a service provider.

2. Billing Aggregator. A "billing aggregator" is any person, other than a service provider, who forwards the charge for a product or service offered by a service provider to a billing agent.

3. CAD Director. The "CAD Director" is the Director of the Consumer Assistance Division, the Assistant Director of the Consumer Assistance Division, or the Commission's designee.

4. Customer. A "customer" is any person who has agreed to receive, been accepted and is receiving telecommunication service or has agreed to be billed for the same, including that person's spouse or legal guardian. For businesses, "customer" also includes a person designated as the contact person for telecommunications services or by any other person with actual or apparent authority to purchase goods or services on behalf of the organization.

5. Letter of Agency (LOA). A "letter of agency" is a document containing a customer's signature that authorizes a service provider to bill a customer for a good or service that will appear as a charge on the customer's telephone bill.

6. Service Provider. A "service provider" is any person, other than the billing agent, who offers a product or service to a customer, the charge for which appears on the bill of a billing agent.

7. Unauthorized Charge. An "unauthorized charge" is the charge for a service or product by a service provider for which the provider has not obtained sufficient evidence of customer authorization and for which a charge appears on the customer's telephone bill. For the purposes of this rule, a charge for a collect call will be deemed to be authorized by the person receiving the call. For direct-dialed calls where the call itself represents the service for which a charge is placed on a customer's local telephone bill, e.g. "900 number" services and "dial around" services, evidence that the call was placed from the number that is subject to the phone bill shall be considered sufficient evidence of authorization for that call.

§ 2 CHARGES FOR GOODS AND SERVICES APPEARING ON A CUSTOMER'S TELEPHONE BILL

A. Customer Authorization. No service provider shall bill a customer for goods or services that will appear as a charge on the customer's local telephone bill without first obtaining the customer's express authorization.

B. Authorization Methods. Any service provider billing a customer for goods or services other than those described in Section 2(C) that will appear on the customer's local telephone bill must verify the customer's authorization pursuant to one of the following procedures:

1. Letter of Agency (LOA). If the service provider obtains the customer's written authorization in the form of an LOA, the LOA must conform to this section.

a. Form. The LOA shall:

i. Be a separate or easily separable document containing the authorizing language consistent with this section, whose sole purpose is to authorize a bill for goods or services to appear as a charge on the customer's local telephone bill, and shall not include any advertising or promotional material, or inducements of any kind. The LOA must be signed and dated by the customer, as defined in Section 1(B), to the telephone line(s) that are the subject of the bills;

ii. Notwithstanding paragraph (i) of this section, the letter of agency may be combined with a check that contains only the required letter of agency language described in this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable bold-faced type on the front of the check, a notice that the consumer is authorizing to be billed for goods or services that will appear as a charge on the customer's local telephone bill by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.

b. Content. The LOA must be printed with a type of sufficient size to be clearly legible and must contain clear and unambiguous language that:

i. Confirms the decision to be billed for goods or services that will appear as a charge on the customer's local telephone bill by signing the check or LOA;

ii. Confirms the customer's billing name, address, and telephone number; and

iii. Contains separate statements for separate goods and/or services for which the customer is agreeing to be billed, where such billing will appear as charges on the customer's local telephone bill.

c. Language. If any portion of an LOA is translated into another language, then all portions of the LOA must be translated into that language. Every LOA must also be translated into the same language as any promotional materials, oral descriptions or instructions provided with the LOA.

2. Oral Authorization with Third Party Verification. A service provider may accept a customer's oral authorization to be billed for goods or services that will appear as a charge on the customer's local telephone bill, provided the service provider verifies the customer's oral authorization with an independent third party.

a. The independent third party must be qualified and independent, must obtain the customer's oral authorization to be billed for goods or services that will appear as a charge on the customer's local telephone bill, and must obtain appropriate verification data to ensure the identity of the customer (e.g. the customer's date of birth or social security number). This method of verification is valid only if:

i. The data are maintained and stored by the independent third party or the service provider for a minimum of two years;

ii. The independent third party informs the customer that he/she is agreeing to be billed for goods or services that will appear as a charge on the customer's local telephone bill;

iii. The independent third party is not owned, managed, controlled, or directed by the service provider; and

iv. The independent third party has no financial incentive to confirm such billing arrangements for the service provider or the provider's marketing agent; and the independent third party operates in a location physically separate from the service provider or the provider's marketing agent.

C. Customer-Initiated Service Calls. For direct-dialed calls where the call itself represents the service for which a charge is placed on a customer's local telephone bill, e.g. "900 number" services and "dial around" services, evidence that the call was placed from the number that is subject to the phone bill shall be considered sufficient evidence of authorization for that call.

§ 3 REGISTRATION REQUIREMENTS AND OBLIGATIONS OF SERVICE PROVIDERS, BILLING AGGREGATORS, AND BILLING AGENTS

A. Obligations of Service Providers. A service provider may not offer a product or service to a customer, the charge for which appears on the bill of a billing agent, nor forward such a charge to a billing agent, unless the service provider is registered with the Commission pursuant to this section.

B. Obligations of Billing Aggregators. A billing aggregator may not forward to a billing agent charges for a service or product offered by a service provider unless:

1. The billing aggregator is registered with the Commission pursuant to this section; and

2. The service provider is properly registered pursuant to this section.

C. Obligations of Billing Agents. A billing agent may not knowingly bill on behalf of a service provider or billing aggregator who is required to be registered under this section and who is not properly registered under this section.

1. For the purposes of this subsection, there is a rebuttable presumption that a billing agent acted knowingly if it billed on behalf of a service provider and/or billing aggregator whose name was not on the Commission's list of registered service providers at the time the charge appeared on the customer's bill or billed on behalf of a service provider and/or billing aggregator whose registration had been revoked and properly noticed pursuant to section 4(G) of this rule.

- a. The Commission will add new registrants to its list of registered carriers within two business days of the effective date of the registration and said list will be posted to the Commission's worldwide website.

- b. The Commission will remove registrants from its list whose registration has been revoked within two (2) business days of the revocation becoming final.

c. A billing agent that places a charge on a customer's bill on behalf of a service provider that is not registered with the Commission pursuant to section 3 of this rule must immediately remove the charge from the customer's bill and will be liable to the customer for reimbursement of charges paid pursuant to section 4 of this rule.

D. Bill Format. Customer bills issued by billing agents must comply with the Federal Communications Commission's Truth-in-Billing Rule, 47 CFR Part 64, once the rule becomes effective, as well as clearly identify the service provider which originated the charge for goods or services.

E. Obligations of Telephone Utilities. A telephone utility that is authorized by the Commission or by law to provide telephone services in Maine is not required to be registered under this section.

§ 4 REGISTRATION PROCEDURES FOR SERVICE PROVIDERS AND BILLING AGGREGATORS

A. Registration Procedure.

1. Form. Billing aggregators and service providers must register on a form provided by the Commission that is notarized and signed by two officers of the applicant. A copy of the application form is attached to the rule and is available from the Commission's Administrative Director or on the Commission's Internet website.

2. Number of Copies; Service. Each applicant must file an original application, two paper copies and a copy in an electronic format specified by the Commission. A copy of the completed application with supporting documentation must be served on the Office of the Public Advocate.

3. Change in Application Information. The applicant shall inform the Commission of any change in the information provided in the application during the pendency of the application.

4. Notice of Application. The Commission will place notification of approved applications on its Internet website within two business days of the registration becoming effective.

B. Denial of Registration. The Commission may deny an application if the Commission finds that:

1. The application is incomplete and the applicant does not take reasonable steps to provide the missing information;

2. The applicant has knowingly misrepresented or omitted a material fact on the application; or

3. The applicant or a principal of the applicant has engaged in conduct in Maine or in another jurisdiction which would constitute grounds to revoke a registration under this rule.

a. The Commission may deny a registration based on conduct occurring outside of Maine only if that conduct would constitute grounds to revoke a registration if it occurred in Maine.

C. Application Review. The Director of the Commission's Consumer Assistance Division (CAD) will review all applications.

1. If the application is complete and there is no indication that grounds exist to deny the application under section 4(B) above, the registration will take effect 14 days after the filing date.

2. If the application is incomplete, the CAD Director may request additional information from applicants. If, after submission of additional information, the CAD Director is satisfied that the application meets the Commission's registration criteria, the CAD Director will approve the registration.

3. If the application is complete but there is evidence that grounds exist to deny the application under Section 4(B) above, the CAD Director will object to the application and provide notice to the applicant within 14 days.

a. If the CAD Director objects to the registration, the registration does not become effective unless expressly approved by the Commission.

i. Hearing. Unless the Commission approves the application based on the information provided to the CAD Director, the Commission shall offer the applicant an opportunity for a hearing at which the applicant may present other evidence in support of its application.

D. Registration Revocation Procedure. After notice and an opportunity for a hearing, the Commission may revoke a registration in accordance with this subsection.

1. Service Providers. The Commission may revoke the registration of a service provider who has:

a. Knowingly or repeatedly billed one or more customers for unauthorized service, provided that for the purposes of this subsection, there is a rebuttable presumption that a service provider “knowingly” billed for unauthorized charges if it cannot verify the customer's authorization for such charges, pursuant to section 2 of this rule, or

b. Engaged in any other false or deceptive billing practices prohibited by Commission rules.

2. Billing Aggregators. The Commission may revoke the registration of a billing aggregator who has:

a. Knowingly or repeatedly forwarded the charge for a service or product to a billing agent on behalf of a service provider who was required to be registered with the Commission under subsection 2 and who was not registered, provided that for purposes of this subsection, there is a rebuttable presumption that a billing aggregator acted knowingly if it forwarded a charge and if the service provider's name was not on the Commission's list of registered service providers at the time the charge was forwarded to the billing agent or if the service provider's registration had been revoked and properly noticed pursuant to sections 4(G)(1) and 4(G)(4) at the time the charge was forwarded to the billing agent; or

b. Engaged in any other false or deceptive billing practices prohibited by other Commission rules.

3. Telephone Utilities. Service providers who are telephone utilities and who are not required to register with the Commission under section 3 are subject to the jurisdiction and control of the Commission and the Commission may impose penalties as permitted under Title 35-A.

4. Notification of Revocation. The Commission shall send written notice of the revocation of a registration under this subsection to all telephone utilities and billing aggregators doing business in Maine within two business days of the revocation becoming final.

§ 5 COMPLAINT PROCEDURES

A. Procedures to be Followed by Billing Agents Upon Customer Notice of Complaint.

1. Suspension of Collection Efforts. If a customer of a billing agent notifies the billing agent that an unauthorized charge has been included in the customer's telephone bill, the billing agent shall:

a. Immediately suspend collection efforts on that portion of the customer's bill; and

b. Either cease collection efforts entirely with regard to the disputed charge or request evidence from the service provider that the customer authorized the service for which payment is sought.

2. Evidence of Customer Authorization. If the billing agent ceases collection efforts or sufficient evidence of customer authorization is not presented to the billing agent within 30 days of a request for such information by the billing agent, the billing agent shall:

a. Immediately remove any charges associated with the unauthorized service; and

b. Refund to the customer any amounts paid for the unauthorized service that were billed by the billing agent during the 6 months prior to the customer's complaint or during any longer period in which the customer can prove the customer was billed by the billing agent for unauthorized services. For purposes of this subsection, proof of being billed by a billing agent includes, but is not limited to, the possession of past bills issued by the billing agent that contain the unauthorized charges.

B. Reinstitution of Charges. If sufficient evidence of customer authorization is provided to the billing agent (as provided by Section 2(B) of this Rule), the billing agent may restore the charges on the customer's bill and reinstitute collection efforts.

C. Notice to Customers. In situations where a billing agent makes a determination that results in a charge being restored to a customer's bill, the billing agent must include a notice to the customer that includes the following information:

1. The billing agent has decided that sufficient evidence of customer authorization for the disputed charge exists and that the charge is being restored to the customer's bill;

2. The customer has the right to appeal the billing agent's decision to the Commission's Consumer Assistance Division (CAD); and

3. The CAD's toll free number, mailing address, and email address.

D. Appeal Procedures. The customer or the service provider may appeal the billing agent's determination regarding the sufficiency of the customer's authorization to the Commission's Consumer Assistance Division. The appeal will be handled as a complaint to the Consumer Assistance Division; however, the appeal will not be counted as a complaint against the billing agent.

§ 6 PENALTY

The Commission may impose an administrative penalty against any person, corporation, or entity that violates this rule, applicable statute, or order adopted pursuant to this rule. Before imposing such a penalty, the Commission must provide the offending party the opportunity to be heard regarding the imposition and amount of the penalty.

A. Violations Subject to Penalty. The Commission, in an adjudicatory proceeding, may impose an administrative penalty upon the following entities for the following violations:

1. A service provider who forwards charges for an unauthorized service;
2. A service provider or billing aggregator who is required to be registered under section 3 and who is not properly registered pursuant to that section;
3. A billing agent who bills on behalf of a service provider who is required to be registered under section 3 and who is not properly registered pursuant to that section at the time the billing agent's bill is generated; and
4. A billing agent that fails to comply with any of the requirements of section 5 regarding complaint procedures.

B. Recommendation of Director of the Consumer Assistance Division. The Director of the Consumer Assistance Division (CAD) will provide the Commission with a description of the violation and its severity and make a recommendation to the Commission regarding the amount of any penalty.

C. Penalty Amount. The amount of any administrative penalty imposed under paragraph A may not exceed \$1,000 per for violation arising out of the same incident or complaint. In situations where more than one entity is involved with the violation, e.g. a service provider and a billing aggregator, each entity in violation of the rule will be liable for a penalty up to \$1,000 per violation. The amount of the penalty must be based on:

1. The severity of the violation, including the intent of the violator, the nature, circumstances, extent and gravity of any prohibited acts;
2. The history of previous violations; and
3. The amount necessary to deter future violations.

For purposes of this subsection, in situations where a service provider, billing aggregator, or a billing agent is notified by a customer that a charge appearing on the customer's local telephone bill is unauthorized and the service provider, billing aggregator, or billing agent either fails to remove the charge from the customer's bill or reinstitutes the charge to the

customer's bill without sufficient evidence of authorization from the customer, each time the unauthorized charge reappears on the customer's bill will be considered a separate violation.

D. Repeat Violations. If the Commission finds that a service provider or billing aggregator has repeatedly violated this rule, the Commission shall order the service provider or the billing aggregator to take corrective action as necessary. In addition, the Commission, if consistent with the public interest, may suspend, restrict or revoke the registration of the service provider or billing aggregator.

§ 7 WAIVER OR EXEMPTION

Upon request of any persons subject to the provisions of this Chapter or upon its own motion, the Commission may for good cause, waive any or all requirements of this Chapter that are not required by statute. The waiver may not be inconsistent with the purpose of this Chapter or Title 35-A. The Commission, the Director of Technical Analysis, the Director of Consumer Assistance, or the Presiding Officer assigned to a proceeding related to this Chapter may grant the waiver.

BASIS STATEMENT: The factual and policy basis for this rule is set forth in the Commission's Order Adopting Rule, Commission Docket No. 99-717 issued on December 20, 1999. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

AUTHORITY: 35-A M.R.S.A. § 7107.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on January 13, 2000. It was filed with the Secretary of State on January 14, 2000 and will be effective on January 19, 2000.